

LABOUR DEPARTMENT

The 19th September, 1978.

No. 11(112)-3Lab-78/8171.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Faridabad, in respect of the dispute between the workman and the management of M/S. G. M. Worsted Spinning Mills, Link Road, Faridabad.

BEFORE SHRI NATHU RAM SHARMA,
PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL, HARYANA,
FARIDABAD.

Reference No. 258 of 1976

between

SHRI CHHOTE LAL, WORKMAN AND
THE MANAGEMENT OF M/S G. M.
WORSTED SPINNING MILLS, LINK
ROAD, FARIDABAD.

Present:—

Shri Ram Murti Sharma, for the
workman.

Shri S. L. Gupta, for the manage-
ment.

AWARD

By order No. ID/46069, dated 17th December, 1976, the Governor of Haryana, referred the following dispute between the management of M/s G. M. Worsted Spinning Mills, Link Road, Faridabad and its workman Shri Chhote Lal, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of subsection (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Chhote Lal was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were given to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed on 28th June, 1977.

- (1) Whether the termination of services of Shri Chhote Lal was justified and in order ? If not, to what relief is he entitled ?

The case was fixed for the evidence of the management. The management examined Shri S. L. Gupta, Enquiry Officer, as M.W. 1. He stated that he held the enquiry into the charges levelled against the workman,—**vide** charge sheet Exhibit M-2. Exhibit M-2/1 is the A.D. Form by which the workman was informed. Exhibit M-3 is the explanation of the workman. The management had found his explanation unsatisfactory, hence enquiry. The worker was present through out the enquiry proceedings. He cross examined the witness for the workman and led his defence. He had signed his attendance in the enquiry. He proved his enquiry proceedings, Exhibit M-4 and his finding Exhibit M-5. He found the workman guilty of the charges. Exhibit M-7 is the letter of the workman and Exhibit M-8 is the dismissal order passed by the management. He further stated that the workman did not sign the statement of the witness for the management and took the plea that the witness for the management have spoken a lie. The workman has signed his defence evidence. He further stated that the enquiry was correct. In cross examination he admitted that he had received Exhibit M-1. He admitted that the enquiry was complete in one day only. He further stated that the workman wanted that he denied a suggestion that the portion of the enquiry proceedings which was not signed by the workman, were written and recorded in his absence. He denied that he himself cross examined the witness for the management and the workman did not cross examine. He further denied that he gave his finding under the influence and

directions of the management. The management closed their case.

Then the case was fixed for the evidence of the workman. The workman examined himself as W.W. 1 who stated that enquiry officer had brought some written papers and asked him to sign and he signed. He further stated that no witness was examined in his presence and that he had not given any statement. He stated that no body appeared as a witness and every thing was already written and he was not given a copy of enquiry proceedings. In cross examination he admitted that the enquiry proceedings bears his signatures on pages Nos. 1, 4 and 5 and he knows a little Hindi reading and that he was illiterate. The workman closed their case. Arguments were heard.

Now I give my finding. Exhibit M-2 is the charge sheet. Exhibit M-3 is a letter of the workman alleging that he was assaulted by Sarvshri Chatervedi, Gopal Babu and Jeet Ram and that the management have suspended him on false allegation. Exhibit M-1 is the order of the management appointing Shri S. L. Gupta, Enquiry Officer and informing the workman regarding time and date of the enquiry. It bears the signatures of the workman. Exhibit M-2/1 is A.D. Form which is signed by the workman receiving charge sheet. Exhibit M-4 is the enquiry proceedings. The first page was signed by the workman, in token of his presence at the enquiry proceedings. Page 2 and 3 of the enquiry proceedings are not signed by the workman but page 4 is signed by the workman. On page 4 the statement of the workman is recorded. Page 5 is also signed by the workman reading that the workman did not want to give any other witness and closed his evidence. Exhibit M-5 is the finding of the enquiry officer. Exhibit M-2 is the charge-sheet which reads that there was much dirt near the machine on which the workman was working and there was also a thread on the machine. Shri Chatervedi asked him to clean the machine but the workman did not pay any heed and began to quarrel with him

and abused him and lifted one Dula to assault Shri Chatervedi and beat him by shoes. Shri Chatervedi has appeared as M.W. 1 at the enquiry who has corroborated the charges levelled by Exhibit M-2. He has specified the specific abuses that were hurled against him by the workman and that the workman had quarrelled with him when he asked the workman to clean the machine and that the workman began to beat by lifting a Rula of wood from a machine. Shri Gopal Babu and Jeet Ram intervened. Shri Bankoo made a report against the workman that on 14th June, 1976 when he went out of the gates of the factory, the workman beat him by shoes. He further stated some other things also against the workman. This witness was cross examined. Then M.W. 2 was examined by the management at the enquiry named Shri Gopal Kapoor. He also corroborated the statement of M.W. 1 that the workman hurled abuses against Shri Chatervedi and lifted a roller to beat him when Shri Chatervedi had asked the workman to clean the machine as the machine was dirty and the thread was being spoiled. Then there appeared a statement of the workman at the enquiry proceedings.

I have gone through the enquiry proceedings and the finding of the enquiry officer. I nowhere find that the principles of natural justice had suffered at the enquiry. The workman has cross examined the witness for the management and has given his own statement and has stated that he closed his case and did not want to give any other witness. Two witnesses for the management proved the charges levelled against him.—**vide** charge sheet Exhibit M-2 and the enquiry officer gave his finding after considering the evidence. His finding is based on evidence and is not perverse. I, therefore, hold that the principles of natural justice did not suffer at the enquiry and the finding of the enquiry officer is not perverse. merely this fact that the enquiry was concluded in a day does not render the enquiry vitiated. The enquiry has been properly conducted. The charges of

abusing and assaulting are grave charges. In view of my above discussions, I decide issue No. 1 in favour of the management.

While answering the reference, I give my award that the termination of services of the workman concerned Shri Chote Lal was justified and in order. He is not entitled to any relief.

Dated the 29th August, 1978.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 811, dated 30th August, 1978.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 29th August, 1978.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 11(112)-3 Lab-78/8177.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Faridabad, in respect of the dispute between the workman and the management of M/s. Barmalt (India) Private Limited, Jharsa Road, Gurgaon.

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD.

Reference No. 98 of 1977
between

SHRI ZILA SINGH, WORKMAN AND THE MANAGEMENT OF M/S. BARMALT (INDIA) PRIVATE LIMITED, JHARSA ROAD, GURGAON.

Present :—

Shri Sagar Ram Gupta, for the workman.

Shri M. P. Gupta for the management.

AWARD

By order No. ID/GG/53-B-77/26258, dated 14th July, 1977, the Governor of Haryana, referred the following dispute between the management of M/s. Barmalt (India) Private Limited, Jharsa Road, Gurgaon and its workman Shri Zila Singh, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) sub-section (1) of section 10 of the Industrial Disputes Act, 1947.

Whether the termination of services of Shri Zila Singh was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed on 24th November, 1977:—

- (1) Whether the workman had lost his lien on his job by remaining absent for the period more than allowed by the standing orders of the company?
- (2) If issue No. 1 is not proved whether the termination of services of the workman was justified and in order? If not, to what relief is he entitled?

The case was fixed for the evidence of the management. The management examined Shri S. S. Dutt, their Factory Manager as M.W. 1 and closed their case.

Then the case was fixed for the evidence of the workman. The workman examined Shri V. K. Jain, Assistant Accountant of the management as W.W. 1 and himself as W.W. 2. The workman also examined one Shri Rameshwar Singh as W.W. 3 and closed his case.

Then the case was fixed for arguments. Arguments were addressed at length and were heard. I now give my findings issuewise.

ISSUE NO. 1:

M.W. 1 has stated that the workman remained absent from 26th October, 1976 to 13th November, 1976. He proved true copies of attendance register Ex. M-1 and M-2 and stated that this register is maintained properly. He further stated that when the workman did not join his duty for several days, the management wrote him a letter on 29th October, 1976. He produced its copy Ex. M-3 which was sent by registered A.D. This letter was received by the workman. The A.D. Form bears the signatures of the workman and date of receipt. Thereafter the name of the workman was struck off the rolls. He further stated that this management has no certified standing orders. About 80/90 workmen were working in this factory and the attendance register has been checked by the Provident Fund Inspector and the register bears his signatures. In cross-examination he stated that E.S.I. Scheme is applicable to their factory. They did not issue any other letter after the letter Ex. M-3. The workman was not charge-sheeted. He remained continuously absent for a very big period although he remained absent previously also for a day or two. A sheet had been stolen from the factory worth Rs 20/25 just prior to one and a quarter month when his name has been struck off. He denied a suggestion that he had told the workman to detect that theft. He further denied another suggestion that the name of the workman had been struck off for the reasons that the workman failed to detect that theft. W.W. 1 stated that the name of the workman was in the E.S.I. register in October, 1976 and January, 1977, till E.S.I. contribution was recovered from his wages. The name of the workman was removed from this register on 13th November, 1976, but they did not receive any letter. The management did not pay the contribution of the workman. He further deposed that the Factory works even on Sunday but that day the workmen were not marked present but weekly rest in lieu of Sunday is given on some other day. The workman was in Set "A" and the contribution of this set is from August, 1976 to January, 1977. copy whereof is Ex. W-1. The contribution of workman was deducted in September, 1976, and is marked absent in next month. 100/125 workmen worked in this factory before the year 1976. If a workman does not attend his duty for 7/8 days his name is struck off. He further stated in cross-examination that the workman was absent from 26th October, 1976, and his name was struck off the rolls on 13th November, 1976. He iden-

tified the signatures of the workman on Ex. M-4. The E.S.I. contribution was not detected in October, 1976, as he was not paid for this month. In the months of October, November, 1976, the workman has been shown in Set "A" but his contribution has not been recorded and this register has no concern with attendance register. In cross-examination he stated that the attendance of the workman is marked daily and the Provident Fund Inspector had also checked it in June, 1976. The name of the workman was struck off on account of absence. W.W. 2 the workman concerned stated that the management removed him from service on 26th October, 1976, for the reasons that the Manager had asked him to detain the workman for family planning but the workman left. The Manager thereupon told him as to why he failed to detain the workmen and that he also failed to detect the theft of the shield. He worked that day but was denied entry on 26th October, 1976. His weekly rest was on 25th October, 1976. He admitted the receipt of the registered letter and the signatures on Ex. M-4. In cross-examination he stated that he did not complain on 26th October 1976, when he was denied entry at the gate. He did not complain in writing to the Manager or to the Labour Department and he did not reply Ex. M-3. W.W. 3 stated that he resigned on 4th May, 1977 and he was working with the workman at one and the same place. There was sterilising movement and the factory manager had asked the workman to detain other workmen for sterilisation. The workman tried to detain other workmen but to no use. He corroborated the statement of the workman and that the workman continued to attend the gates of the factory but was not allowed entry. In cross-examination he stated that the workman did not complain to the Labour Officer that he was dis-allowed entry in the factory. He further stated that the workman did not complain to the Director also in his presence. He admitted that the workmen who perform their duty are marked present in the attendance register daily and there were about 150 workmen in the factory and he did not take part in sterilisation movement. The copy of attendance register M-1 and M-2 clearly proved that the workman absented from 26th October, 1976 to 13th November, 1976, for continuously 18 days and thereafter his name was struck off. Ex. W-1 produced by the workman also shows that the workman is marked absent in October, 1976 to January, 1977. This pertains to E.S.I. Scheme. The proceedings before the Conciliation Officer

also speaks that the management stated there that the workman was absent from 26th October, 1976 and the management wrote him a letter on 29th October, 1976, copy whereof is Ex. M-3, stating therein that the workman was absent from 26th October, 1976, and asking him to report for duty within 12 hours. This letter was sent to the workman by registered A.D., Ex. M-4. The A.D. Form on which the signatures of the workman appears, proved that the workman received this letter but even then the workman did not report for duty, nor sent any letter or application to the management regarding his absence.

In the circumstances it cannot be concluded that the management wanted to terminate the services of the workman, when after the absence of the workman, the management asked the workman to attend his duty by a registered letter which the workman received. I do not find any other documentary evidence, prior to demand notice, dated 15th November, 1976 and after the letter of the management Ex. M-3, dated 29th October, 1976, by which I may conclude that the workman intended to attend his duty. The attack of the workman against termination of service for the first time finding place in his statement of claim is victimisation for trade union activities. The second attack is victimisation for his failure to detect the theft of a shield and sterilisation but the plea of sterilisation comes at a later stage and not at the earlier stage. The plea of a sterilisation finds place neither in his statement of claim nor in rejoinder. It even does not find place in the statement of his representative before the Conciliation Officer in conciliation proceedings. This plea occurred to the mind of the workman at a very late stage, just at the stage of evidence and not prior to that.

The learned representative for the workman argued that the management did not ask for the explanation of the workman for his absence but asked the workman for resuming his duty. When the management asked the workman to resume his duty, the intention of the management seems to be bona fide. Not asking the explanation for absence from the workman helps the management and not the workman. It shows that the management had no punity mind. The learned representative for the workman further argued that the name of the workman was struck off on 15th November, 1976. He argued that the demand notice is also dated 15th November, 1976 and that the management struck off his name on knowing of the demand notice.

Ex. M-2 shows that the workman is marked absent up to 13th November, 1976, 14th November, 1976 is Sunday, and on 15th November, 1976 the word "A" is not written, it may be argued that the name of the workman was struck off on 15th November, 1976. The management could strike off the name of the workman even prior to 15 November, 1976, and even prior to 13th November, 1976. On the contrary the learned representative for the management stated that it could also be argued in favour of the management that the workman gave demand notice on knowing on 15th November, 1976, that his name had been struck off. This argument does not convince me. It seems to be a hypothetical argument. This is clear that the workman remained absent from 26th October, 1976 to 13th November, 1976 and according to the Model Standing Orders, the management could strike off the name of the workman from their rolls.

The learned representative for the workman relied on and argued Shambu Nath Banerjee's case.

I have gone through the case. In that case, the post of motion shelter held by the workman had been abolished due to re-organisation in the management. Therefore, it was a case of retrenchment. Thereafter there was a settlement between the management and the workmen and therefore, no employee was retrenched and the management agreed to offer work on any other suitable posts. In this way the post of a Trainee on probation was offered to the workman. After extending the period of probation upto 9 months the management found him unsuitable and then offered him the post of a Fitter on the same pay which he was receiving as a motion selter. Then the management had written a letter to the workman that if the workman did not accept that job, then he can be retrenched as a consequence thereof. This letter was received by the workman on 12th August, 1965. He had worked as a Trainee upto 14th August, 1965 15th August, 1965 was Public Holiday. On 16th August, 1965, the workman wrote to the management to give him further chance to show his efficiency and if he failed to improve, he shall tender resignation. The management did not reply that letter. Thereafter the name of the workman was struck off with effect from 24th August, 1965, and then a dispute had arisen. In that case the termination amounted to retrenchment, actually it was a case of retrenchment. Although the management had given it a name of termination and that termination was unjustified. Retrenchment

is termination but termination sometimes may be retrenchment, sometimes may not be retrenchment. In that case, the termination was a retrenchment. In that case the counsel for the management then argued on the vires of section 2-A of the I. D. Act on some new ground which their Lordship rejected. Then the learned counsel for the management relied on the standing orders. Their Lordships considered the standing orders but the termination did not fall within the ambit of the standing orders. The standing orders in that case had provided for termination if absence of the workman continued for more than 8 days and the absence of the workman in that case did not continue for more than 8 days and then their Lordships held the order of termination untenable even on the basis of the standing orders. When their Lordships considered the standing orders, it can not be argued that even if, the termination is in accordance with the standing orders even then retrenchment compensation should be paid. Even in that case if the absence of the workman would have continued for more than 8 days, and the termination would have fallen within the ambit of the standing orders, it is conceivable and reasonable to infer that the result would have been otherwise. Consideration of standing orders by their Lordships even in that case suggests that their Lordship did not intend to undo the standing orders. In that case their Lordships have nowhere held that even if the termination is in accordance with the standing orders, the retrenchment compensation shall have to be paid. On the contrary, there are various rulings of the Hon'ble the Supreme Court of India holding the termination of service justified, when it was in accordance with the standing orders. Even in Shambu Nath Banerjee's case, consideration of standing orders by their Lordships suggest that their Lordship did not do away with the sanctity attached to the standing orders. Their Lordships have held previously in other ruling that standing orders are a statutory contract. To my mind, that ruling does not apply to the facts of this case. In this case, the management even wrote a letter to the workman to report for duty after his absence.

The learned representative for the workman also relied on 1978-1-LIN-page 469; titled Ahmedabad Advance Mills Co. Ltd., and Sunderbhai and Buda Bhai. In this case, the employee had over stayed leave due to detention in Jail on a charge of murder and the employer struck off his name

and terminated his services. Employees had reported for duty on release on acquittal and the employer had refused to reinstate the employee. It was observed that if enquiry had been held, it would have been found that it was not the intention of the workman to leave service voluntarily and the absence was inforced and beyond his control. It was neither culpable or negligence or absentism without any justifying cause. In that case the absence of the employee did not amount to his intention to leave service voluntarily and thus standing orders 11(4) was not attracted, and enforced absence did not amount to absence without leave. In those standing orders clause (E) of standing orders No. 21 had provided absence for more than 14 days as a misconduct. It was further held in that case that liability of the employee to be considered as having left service has to be considered on an application of mind by the employer to the relevant facts. Here in the instant case, the management has written a letter to the workman to report for duty and that letter had been delivered to the workman. That letter was dated 29th October, 1976 and even then the workman did not report for duty upto 13th November, 1976. Therefore, this ruling also does not help the workman. In this ruling, it was a case of enforced absence, and enforced absence does not amount to absence without leave, and in that case their Lordships have held that enforced absence was no absence, because the persons of the workman was beyond his control. It was neither a matter where a workman had over stayed leave or was absent, and in those circumstances if enquiry would have been held by the management enforced absence could be proved by the workman. In that case the workman had even reported for duty at the mill gate after he was released from jail. He had, even seen the acting Manager. In that case the workman had over stayed the sanctioned earned leave but could not report for duty on the expiry of his leave because he was confined to Jail on the charges of murder and had to remain in jail till he was acquitted of the charges and released from the jail custody. Even the management had admitted that the workman had gone to them to report for duty but after some days of his release. The absence of the workman in that case was not voluntarily and the intention of the workman to leave service could not be inferred and the presumption of culpable negligence or absentism in being absent in an enforced manner was repelled. Their Lordships have held that this enquiry

would not be a detailed enquiry as is held by the management in the case of mis-conduct, but a sort of enquiry which would give the concerned workman an opportunity to explain the reasons for his inability to resume his duty. Their Lordships in that case have held that it is a question to be decided on the facts of the case whether by such absence the employee is deemed to have left service voluntarily. Their Lordships have further held that an involuntary Act of an employee of absenteeism beyond the period of leave and failure to report for work within the prescribed period does not necessarily call for an act on the part of the mill company to strike off the name of the employee from the muster roll. In that case the facts of the custody in Jail of the workman was not in dispute and the workman had reported for duty as soon as he was released from Jail. Their Lordships further held that over staying of leave does not involve the same degree of culpability, as in case of over-stayal the employee has to explain why he did not apply for extension and whether the reasons for his absence were compelling, as in such circumstances failure to apply becomes nearly a technicality and a misconduct involving a breadth of rule, of service. Their Lordships in the case held that that was a case of over-stayal of leave because of the enforced absence, as the absence was not voluntary and beyond control. In that ruling their Lordships have referred the S.C. Ruling in Shambu Nath Banerjee's case, (a D.C.M. case) wherein their Lordships have held that striking off the name is termination of service and such termination of service is retrenchment. Here it is worthy to note that their Lordships of the Hon'ble the SC. in Shambu Nath Banerjee's case, have qualified, the word "termination" by the word "Such". Their Lordships have held that "such termination" is retrenchment. Such termination means, termination as and similar to that in that case. In that case the order of termination was found untenable even on the basis of standing orders but although the main attack was against section 2-A of the ID Act, even then their Lordships considered the standing orders alternatively but this case did not fall even under the standing orders. Therefore, their Lordships held that such termination, meaning thereby termination as in that case, was retrenchment under section 2(OO) of the Act. By considering the standing orders in Shambu Nath Banerjee's case, their Lordships did not do away the sanctity of the standing orders, rather they considered that even the plea was raised in arguments but the matter did not fall within the standing orders.

Here in this instance case, the workman absented from duty. In this case the workman was not sanctioned any leave and, therefore, the question of over-stayal of leave does not arise. In Ahmadabad Advance Mills Company, Limited and Sunder Bhai and Buda Bhai case, their Lordships have held that in the matter of over stayal of leave, a sort of enquiry should be held, so that the workman might explain the reasons for his absence. The instant case is a case of absenteeism pure and simple from the very beginning. In this case an inference that the workman left his service is reasonably raised." As even after absence of the workman, the management wrote him a letter calling him to report for duty. This letter is dated 29th October, 1975, whereas the workman absented on and from 26th October, 1976 and this letter was received by the workmen on 3rd November, 1976, as is proved and admitted by the workman himself, but even then the workman did not reply this letter, nor reported for duty.

In this case Model Standing Orders apply. Model Standing Orders were framed by the Government. Rule 16(4) provide that if the workman remains absent without sanctioned leave or beyond the period of leave originally granted and subsequently extended, he shall lose his lien on his appointment unless (a) he returns within 10 days of the commencement of the absence or the expiry of the leave and (b) explains to the satisfaction of the Manager the reasons of his absence or his inability to return on the expiry of the leave as the case may be. The workman was absent on and from 26th October, 1976. The management wrote him a letter on 29th October, 1976, and sent it by registered post with A.D., which was received by the workman on 3rd November, 1976. Within 10 days of the absence of the workman or even within 10 days of the receipt of the said letter of the workman Ex. M-3 calling him back on duty, the workman neither replied this letter or attended or reported for duty or explained any reasons, etc. This is an admitted fact in this case that the absence of the workman was not enforced one. It was voluntary or culpable negligence. In such circumstances the presumption correctly arises that the workman left the service of his own and lost his lien on his appointment. This inference of presumption has not been repelled. In the instant case, the act of the management is sustainable under the standing orders.

The representative for the management cited

1977-Labour Industrial Cases page 1801, wherein termination of employment was held proper on the ground that standing orders provided for loss of lien on appointment in case of workman not returning within 8 days of expiry of leave.

I, therefore, decide issue No. 1 in favour of the management.

As issue No. 1 has been proved in favour of the management, it is not a termination of service of the workman by the management but a case of loss of lien on appointment on the part of the workman. While answering the reference, I give my award that the workman has lost lien on his appointment of his own, and it is not a case of termination of services of the workman by the management. The workman is not entitled to any relief.

Dated the 29th August, 1978.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 813, dated the 30th August, 1978.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act 1947.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 11 (112)-3Lab-78/8180.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947, (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Faridabad, in respect of the dispute between the workman and the management of M/s. Bishwa Nath Industries Limited, Mathura Road, Faridabad.

BEFORE SHRI NATHU RAM SHARMA,
PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL, HARYANA, FARIDABAD.

Reference No. 147 of 1976

between
SHRI SHIV RAJ, WORKMAN AND THE
MANAGEMENT OF M/S. BISHWA
NATH INDUSTRIES LIMITED,
MATHURA ROAD,
FARIDABAD

Present:
Shri Darsan Singh, for the workman.
Shri B. R. Grover for the management.

AWARD

By order No. ID/FD/35-A-76/29078, dated 6th August, 1976 the Governor of Haryana referred the following dispute between the management of M/s. Bishwa Nath Industries Limited, Mathura Road, Faridabad and its workman Shri Shiv Raj, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) sub-section (1) of section 10 of the Industrial Disputes Act 1947.

Whether the termination of services of Shri Shiv Raj was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed on 6th May, 1977:

(1) Whether the workman lost his lien by absenting himself?

(2) Whether the workman raised the demand with the management at proper time?

(3) Whether the termination of services of the workman concerned was justified and in order? If not, to what relief is he entitled?

The case was fixed for the evidence of the management. Although there were negotiations for settlement but settlement was not arrived at. The management examined Shri M. D. Sharma their Personnel Officer, as M.W. 1 who stated that the workman had gone on leave on 6th January, 1976 and was on leave up to 20th January, 1976. The workman had sent an application and a medical certificate which he produced. He further stated that medical certificate Exhibit M-1 was received on 29th January, 1976 together with letter Exhibit M-2 but this letter was not signed by the workman and thereafter the workman went to their factory about 4 months. He told the workman that the management did not recognise that certificate. He further stated that he wanted to give a letter to the workman that in case he was ill, he shall be examined in B. K. Hospital at Faridabad at the expenses of the management and if B. K. Hospital authorities certified that the workman was suffering from Asthma, the management shall take him on duty to which the workman did not agree. He proved certain documents also. In cross examination he admitted that he did not send any reply to Exhibit M-2, nor they had informed the workman that they had not accepted the medical certificate Exhibit M-1. He further stated that the workman had not brought fitness certificate with him when he came to their factory after 4 months. He further admitted that he did not send any letter to the workman by registered post informing him of their proposal of getting him examined in B. K. Hospital but they had send such letters by U.P.C. which was not returned to them. He stated that he attended the conciliation proceedings but had left as the conciliation officer was not present and thereafter he did not go to the Conciliation Officer. He stated that he did not remember whether he had filed written comments before the Conciliation Officer on behalf of the management. He could not tell whether the record of conciliation officer was received by them or not. He stated that Exhibit M-5 bears the address of the workman as given by the workman in a register which accepted by the management. Naturally

he did not bring. He identified the signatures of the workman at point 'A' on Exhibit M-2 and that Exhibit M-1 does not bear his signatures. The management closed their case.

Then the case was fixed for the evidence of the workman who examined himself and closed his case. The workman W.W. 1 stated that he was on leave from 6th January, 1976 to 20th January, 1976 but thereafter he fell sick and sent application for extension by registered letter, postal receipt is Exhibit W-1 and A.D. Form is Exhibit W-2 and that he had sent the medical certificate. When he went on duty on 5th May, 1976 the management did not allow him duty. I now give my findings issuewise.

ISSUE NO. 1:

I have gone through the entire evidence of the parties. The medical certificate Exhibit M-1 bear the signature of the workman. Exhibit M-2 is the application for extension of leave purports to bear the signatures of the workman but the same is denied by the management. The medical certificate is dated 21st January, 1976 with effect from 21st January, 1976. It describes the disease of Bron Shial Asthma. This certificate also describes the O.P.D. No. 469. The management has admitted the receipt of Exhibit M-1 and Exhibit M-2. The management did not reply this letter Exhibit M-2 with which the workman had sent the medical certificate, Exhibit M-1. Asthma is a disease which takes more time to cure. Even if the application is said to be un-signed by the workman, it is not a substantial defect, when it was accompanied by a medical certificate which bear the signatures and seal of the doctor and as well as of the workman patient. The management did not reply this letter. It was the duty of the management to reply this letter and to inform the workman as to in what respect the application and the medical certificate were defective. The management also did not inform the workman that his application for extension of leave and the Medical certificate have not been accepted by the management. Naturally

the workman could rightly presume that the application for extension of leave and the medical certificate have been granted and accepted by the management. Although it is correct that the leave application did not mention the specific dates upto which it was intended to be made but the application reads that the workman shall produce fitness certificate when he shall present himself for duty. Although the commencement of illness of the workman is mentioned in the application of extension of leave as well as in the medical certificates. Although it is not mentioned in the application as to upto what time the workman sought extension of leave. It is also not mentioned in medical certificate as to upto what time the patient is likely to recover. In certain cases it is possible that the doctor may not be in a position to give the time upto which the patient shall recover. In the application the workman omitted to give the length of period of extension of leave but it is not a defect which debars him from joining duty. Had the management cared to drop him a letter asking him the length of period of extension of leave, this small defect could be cured by the workman by his reply but the management did not drop a single word to the workman by which the workman presumed very rightly that his application for extension of leave and medical certificate have been accepted. The absence of the workman was not voluntarily. He was ill, proof whereof is the medical certificate is Exhibit M-1. When the management did not reply the application of the workman, Exhibit M-2, it can not be inferred that the workman lost his lien by absence. It was no absence in the eye of law. The only ground of termination of services of the workman concerned is that the application was not signed by the workman whereas it purports to have been signed by him. It is un-necessary for me to give a finding whether the application bears his signatures or not, but at the proper place of signatures on this application the name of the workman appears. It may or may

not be in his handwriting but, as discussed above, it has no meaning when this application was accompanied by a medical certificate bearing the signatures of the workman, as well as the signatures and seal of the doctor. The second ground for termination of the workman is that neither the medical certificate mentions the length of period during which the disease might cure, nor the application mentions, the length of period of extension of leave. I have observed above, that had the management replied this letter and taken these objections, these objections could have been remedied. I, therefore, decide issue No. 1 against the management.

ISSUE NO. 2:

This has been well settled that non-raising of demands with the management at proper time does not effect the dispute or the reference. Moreover, the demand notice is dated 15th May, 1976 whereas the workman had attended the factory on 5th May, 1976 when he was denied duty. Therefore, I hold that the demand had been raised at a proper time. I decide issue No. 2 in favour of the workman.

ISSUE NO. 3.

As I have decided issue No. 1 against the management, it is the management who have terminated the services of the workman and there was no justification for terminating his services. I therefore, decide this issue that the termination of services of the workman was neither justified nor in order. As regards relief, the workman is entitled to be reinstated with continuity of service and with full back wages, the management have no where pleaded that the workman was employed gainfully.

In answering the reference, I give my award that the termination of services of the workman concerned Shri Shiv Raj was neither justified nor in order. He is

entitled to reinstatement with continuity of service and with full back wages.

Dated 29th August, 1978.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal Haryana,
Faridabad.

Endorsement No. 814, dated the 30th
August, 1978.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

NATHU RAM SHARMA,

Presiding Officer,
Industrial Tribunal Haryana,
Faridabad.

The 22nd September, 1978

No. 11(112)-3Lab-78/8353. In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak. In respect of the dispute between the workman and the management of M/s. Haryana Textile Bhiwani :—

**BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER LABOUR COURT,
HARYANA, ROHTAK**

Reference No. 39 of 1978

between

**SHRI RAM LOO WORKMAN AND THE MANAGEMENT OF 'M/S HARYANA TEXTILE
BHIWANI'**

Present :—

Shri Sagar Ram Gupta, for the workman.

Nemo, for the management.

AWARD

By order No. ID/HSR/41-78/9216, dated 1st March, 1978, the Governor of Haryana referred the following dispute between the management of M/s Haryana Textile Bhiwani and its workman Shri Ram Loo, to this Court, for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Ram Loo was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The workman appeared and filed his claim statement. Once Shri M. M. Kaushal representative for the management appeared on 2nd May, 1978 but thereafter none appeared for the management. So the management was proceeded against *ex parte* and the case was fixed for the *ex parte* evidence of the workman. The workman examined himself as his own witness and stated that his services were terminated by the management in quite an unjustified manner. There was no guilt whatsoever on his part, nor he was chargesheeted. I, believe in the *ex parte* statement of the workman made on solemn affirmation. I, find that the termination of the services of the workman concerned Shri Ram Loo was neither justified nor in order. He is entitled to be reinstated with continuity of service and full back wages.

Dated the 28th August, 1978.

NATHU RAM SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 2555, dated the 11th September, 1978.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

NATHU RAM SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.